No. 84-9

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and CECILIA STEVENSON,
Petitioners,

v.

DORIS RUSSELL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether, under the Employee Retirement Income Security Act, a fiduciary to an employee benefit plan may be held personally liable to a plan participant or beneficiary for punitive damages or extra-contractual compensatory relief for improper or untimely processing of benefit claims?

PARTIES TO THE PROCEEDING

Massachusetts Mutual Life Insurance Company *

Cecilia Stevenson

Doris Russell

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* The following are non-wholly owned subsidiaries of the Massachusetts Mutual Life Insurance Company as well as companies that may be deemed affiliates thereof:

MML Blend Investment Company, Inc.
MML Equity Investment Company, Inc.
MML Managed Bond Investment Company, Inc.
MML Money Market Investment Company, Inc.
MML Bay State Life Insurance Company
MassMutual Corporate Investors Inc.
MassMutual Income Investors Inc.
MassMutual Mortgage and Realty Investors
MassMutual Liquid Assets Trust
Maslif One & Co.

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The Petitioners, Massachusetts Mutual Life Insurance Company, and Cecilia Stevenson, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on December 16, 1983.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 722 F.2d 482 (9th Cir. 1983), and appears in the Appendix at 1a to 25a. The order of the United States District Court for the Central District of California granting petitioners' motion for summary judgment, as well as the findings of fact and conclusions of law issued in con-

nection therewith, are unreported and appear in the Appendix at 26a to 32a.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Ninth Circuit was entered on December 16, 1983. A timely petition for rehearing and suggestion for rehearing en banc was denied by the Court of Appeals on April 6, 1984. Appendix ("App.") at 34a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

This case involves sections 409, 501, 502, and 503 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1109, 1131, 1132, and 1133 (1982), and 29 C.F.R. § 2560.503-1 (1983) promulgated under ERISA section 503. These provisions are reproduced in the Appendix at 35a to 48a.

STATEMENT OF THE CASE

Petitioner, Massachusetts Mutual Life Insurance Company ("Mass Mutual"), sponsors two ERISA-covered employee benefit plans which provide disability benefits to eligible employees. The Employee Salary Continuance Plan is a sick pay plan which provides short-term salary continuation payments for employees. The Employee Disability Plan provides long-term disability benefits to totally disabled employees who have exhausted their Salary Continuance Plan benefits. Both plans are provided at no cost to employees and are funded from the general assets of the company.[1]

Respondent, Doris Russell, worked as a group claims examiner in Mass Mutual's Los Angeles office until May, 1979 when she became disabled with a back problem.

[1] Petitioner Cecilia Stevenson, an employee of Mass Mutual, was Respondent's supervisor at the company.

Shortly thereafter, Respondent began receiving benefits under the Employee Salary Continuance Plan. These benefits were discontinued by the plan in October, 1979 upon the recommendation of Mass Mutual's Disability Committee.[2] This recommendation was based on an examination report from an independent orthopedic surgeon which concluded that Russell was not physically disabled from performing her usual occupation and that no permanent disability was anticipated.

Russell was advised both of this decision and her right to appeal to the Plan Administrator by letter dated October 17, 1979. App. at 49a. Thereafter, by letter dated October 22, 1979 to the Director of Group Claims rather than the Plan Administrator, Russell requested additional information regarding the termination of her benefits and an application for long-term disability benefits. App. at 50a. She also indicated that she would appeal the termination and submit additional medical evidence confirming her disability. *Id.* Such additional evidence was presented to the Plan Administrator in a letter dated November 27, 1979, and included a report from Russell's psychiatrist which indicated that she was suffering from a psychosomatic disability with physical manifestations rather than an orthopedic disability. App. at 54a.

Russell's November 27, 1979 letter was treated as a formal appeal and referred to the Disability Committee. Thereafter, at the Disability Committee's request, Russell was examined by an independent psychiatrist, who confirmed Russell's temporary psychiatric disability in a report dated February 15, 1980. Based on this report, the Disability Committee recommended that Russell's dis-

[2] The Disability Committee is composed of Mass Mutual's Chief Medical Officer, and four other employees of the company. These employees are appointed by the Chief Executive Officer and receive no special compensation for serving on the Committee, above their normal salary.

ability benefits be reinstated retroactively, which recommendation was adopted. Russell was notified of this decision by letter dated March 11, 1980, App. at 56a, and payment of all benefits due her was made two days later. App. at 57a-58a. In addition, Russell subsequently submitted an application for long-term disability benefits which was approved.[3]

Despite the award of all plan benefits to which she was entitled, Russell brought this action against Petitioners on December 9, 1980 in California Superior Court. Her complaint, which purportedly was predicated on state law, alleged several causes of action arising from her initial suspension of benefits, including breach of a duty of good faith and fair dealing, breach of fiduciary duty, and intentional and negligent infliction of emotional distress.[4] As relief, Russell sought compensatory damages for economic losses and mental anguish and an award of punitive damages.[5]

Following removal of the action,[6] the United States District Court for the Central District of California granted Petitioners' motion for summary judgment. The court first held that ERISA preempted all state law causes of actions relating to the processing of Russell's

[3] In contrast, Russell submitted a claim to the Social Security Administration for disability benefits which was denied.

[4] Russell's complaint also included a claim for wrongful discharge under state law which is not involved in this petition.

[5] Among other things, Russell alleged that the suspension of benefits forced her husband, who also was disabled and without income, to cash out his retirement savings plan in December, 1979. Further, Russell contended that her preexisting psychosomatic illness was aggravated as a result of the alleged improper and untimely processing of her benefit claim, and sought damages for mental and emotional distress.

[6] Petitioners removed this action pursuant to 28 U.S.C. § 1441(a) (1982), alleging the existence of federal jurisdiction under 29 U.S.C. § 1132(e)(1) (1982) and 28 U.S.C. § 1331(a) (1982).

claim for disability benefits. App. at 29a-30a. It then concluded that, as a matter of law, punitive damages and extra-contractual compensatory damages were not available under ERISA. App. at 30a. The court thus accepted, *sub silentio*, Petitioners' contention that, in the benefits claim context, ERISA extends a plan participant a cause of action solely for recovery of benefits due under a plan, which benefits Russell had been paid in full. Finally, the court rejected Russell's argument, raised for the first time in opposition to Petitioners' motion, that Petitioners had violated ERISA by failing to process her appeal within 120 days, as required by regulations promulgated under ERISA section 503, 29 U.S.C. § 1133. *See* 29 C.F.R. § 2560.503-1(h) (1983). App. at 30a. In this regard, the court accepted Petitioners' contentions that Russell's appeal began upon receipt of her November 27, 1979 letter, and that Petitioners' disposition of that appeal on March 11, 1980 was well within the 120-day time limit. *Id.*

The Ninth Circuit affirmed the district court's ruling that Russell's state law causes of action were preempted by ERISA. App. at 8a. It held, however, that Russell had stated a cause of action under ERISA for breach of fiduciary duty, based on the alleged improper or untimely handling of her appeal. App. at 10a. In this regard, the Court of Appeals peremptorily rejected the district court's finding that the Plan Administrator had processed her appeal in a timely manner, determining that Russell's appeal had commenced with her initial letter of October 22, 1979, and that the final determination, accordingly, was rendered at least twelve days beyond the 120-day limit. App. at 11a-12a. The Court went on to hold that such a cause of action could support an award of both extra-contractual compensatory relief, including damages for mental or emotional distress, and punitive damages, reversing the district court's conclusion that such relief was unavailable under ERISA in the benefit claims context. App. at 13a-18a. In so holding, the Court relied upon

language in ERISA section 409 which subjects errant fiduciaries to, among other things, "such other equitable or remedial relief as the court may deem appropriate." App. at 13a, 16a. In the Court's view, such language was broad enough to encompass both punitive and compensatory damages notwithstanding that: (a) section 409 by its terms authorizes recovery *only* on behalf of a plan and *not* on behalf of individual plan participants; (b) punitive damages traditionally have been viewed as neither remedial nor equitable forms of relief; and (c) Congress expressly provided a cause of action to plan participants and beneficiaries in the benefit claims context limited to the recovery of plan benefits and the enforcement and clarification of their rights under the plan, ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (1982).[7] It therefore remanded the case to the district court for further proceedings.

REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit's Punitive Damages Ruling Conflicts with Decisions of the Eighth Circuit and Numerous District Courts

Review of the lower court's ruling on punitive damages is essential to resolve a conflict both between the Ninth and Eighth Circuits and among the district courts. That the Ninth Circuit has authorized an award of punitive damages under ERISA is plain both from *Russell* and its subsequent decision in *Winterrowd v. Freedman & Co.*, 724 F.2d 823 (9th Cir. 1984), affirming an ERISA award of punitive damages against a contributing employer to a multiemployer plan. The Ninth Circuit's holding, however, squarely conflicts with the reasoning of

[7] The other causes of action extended to participants and beneficiaries under ERISA § 502 likewise make no mention of punitive or compensatory damages, but instead are limited to non-legal forms of relief. *See* ERISA § 502(a)(1)(A), (a)(3), (a)(4), 29 U.S.C. § 1132(a)(1)(A), (a)(3), (a)(4) (1982).

the Eighth Circuit in *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981), in which the Court stated:

> We do not think punitive damages are provided for in ERISA. Ordinarily punitive damages are not presumed; they are not the norm; and nowhere in ERISA are they mentioned. If Congress had desired to provide for punitive damages, it could have easily so stated, as it has in other acts.

653 F.2d at 1216 (dictum); *see also Bittner v. Sadoff & Rudoy Industries*, 728 F.2d 820, 825-26 (7th Cir. 1984) (punitive damages not available in action for plan benefits under ERISA section 502(a)(1)(B)). This reasoning has been followed by district courts both in the Eighth Circuit and elsewhere. *See, e.g., Meyer v. Phillip Morris, Inc.*, 575 F. Supp. 1232 (E.D. Mo. 1983) (punitive damages not available against fiduciary for violation of section 104(b)(1) & (3)); *Hechenberger v. Western Electric Co.*, 570 F. Supp. 820 (E.D. Mo. 1983) (punitive damages not available under ERISA); *Meyer v. Phillip Morris, Inc.*, 569 F. Supp. 1510 (E.D. Mo. 1983) (punitive damages not available for violation of section 104(b)(3) & (4)); *Maxfield v. Central States Health, Welfare & Pension Funds*, 559 F. Supp. 158 (N.D. Ill. 1982) (punitive damages not available under ERISA).

Other district courts across the country likewise are sharply divided on the availability of punitive damages under ERISA as well as the legal rationale therefor. *Compare Eaton v. D'Amato*, 581 F. Supp. 743 (D.D.C. 1980) (punitive damages available against fiduciary under section 409); *Jiminez v. Pioneer Diecasters*, 549 F. Supp. 677 (C.D. Cal. 1982) (same); *Bobo v. 1950 Pension Plan*, 548 F. Supp. 623 (W.D.N.Y. 1982) (same); *Free v. Gilbert Hodgman, Inc.*, 3 Empl. Ben. Cas. (BNA) 1010 (N.D. Ill. 1982) (same); *and Bittner v. Sadoff & Rudoy Industries*, 490 F. Supp. 534 (E.D. Wis. 1980) (punitive damages available for violation of section 440),

with Zittrouer v. UARCO, 582 F. Supp. 1471 (N.D. Ga. 1984) (punitive damages not available under ERISA); *Whitaker v. Texaco, Inc.*, 566 F. Supp. 745 (N.D. Ga. 1983) (punitive damages not available against fiduciary under section 409); *Diano v. Central States Health, Welfare & Pension Funds*, 551 F. Supp. 861 (N.D. Ohio 1982) (punitive damages not available under ERISA); *Calhoun v. Falstaff Brewing Corp.*, 478 F. Supp. 357 (E.D. Mo. 1979) (same); *Hurn v. Retirement Fund Trust of Plumbing Industry*, 424 F. Supp. 80 (C.D. Cal. 1976) (same); *UAW v. Federal Forge, Inc.*, No. G83-330 (W.D. Mich. Apr. 5, 1984) (same); *Heine v. Clark Equipment Co.*, No. 82-C-1286 (N.D. Ill. Dec. 21, 1983) (same); *Scheirer v. NMU Pension & Welfare Plan*, No. 82 Civ. 5544 (S.D.N.Y. Sept. 15, 1983) (same); *Jackson v. Occidental Life Insurance Co.*, No. C-80-4288 SW (N.D. Cal. Mar. 2, 1981) (same); *Ziskind v. Retail Clerks International Association*, 3 Empl. Ben. Cas. (BNA) 1012 (E.D. Cal. 1982) (punitive damages not available against fiduciary under section 409); *Rogers v. Northern California Retail Clerks Trust Fund*, No. C-77-1904 (N.D. Cal. June 8, 1978) (punitive damages not available under ERISA); *and Bell v. Southern Oregon Log Scaling Bureau*, 1 Empl. Ben. Cas. (BNA) 1439 (D. Or. 1976) (same). *See also Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084 (W.D. Pa. 1983) (court implied punitive damages allowable against fiduciary under ERISA). The confusion created by these rulings, which already has affected employee benefit plans and their fiduciaries across the country, provides sufficient grounds for reviewing the lower court's decision.

II. The Decision Below Is Inconsistent with ERISA's Plain Language and Legislative History, Prior Rulings of this Court and Decisions Interpreting Analogous Statutes

The Ninth Circuit's ruling not only has exacerbated the confusion existing in the lower courts, but also rests

on a fundamental misconstruction of ERISA. Even a cursory review of ERISA demonstrates that section 409 by its terms authorizes recovery of appropriate equitable and remedial relief *solely* on behalf of the plan itself, and not on behalf of individual participants.[8] This fact is confirmed, moreover, by ERISA's legislative history which repeatedly emphasizes that any recovery under section 409 necessarily inures to the benefit of the plan as a whole. *See, e.g.*, H. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 320 (1974) (fiduciary personally liable for losses sustained by plan that result from violation of rules); S. Rep. No. 127, 93d Cong., 1st Sess. 33 (1973) (fiduciary personally liable to reimburse fund for losses resulting from breach and to pay over personal profit realized through use of fund assets); *see also Zink v. Heiser*, 109 Misc. 2d 354, 438 N.Y.S.2d 209 (Sup. Ct. 1981) (recovery against fiduciary under section 409 available only to plan and not to participants or beneficiaries).[9]

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[8] Section 409(a) provides in pertinent part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good *to such plan* any losses to the plan resulting from each such breach, and to restore *to such plan* any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject *to such other* equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

29 U.S.C. § 1109(a) (1982) (emphasis added).

[9] That § 409 provides recovery only on behalf of the plan itself is further evident from § 502(a)(2), the ERISA civil enforcement provision which sets forth the statutory basis for bringing suit against fiduciaries. That section authorizes four categories of individuals to seek relief under § 409: (1) the Secretary of Labor; (2) participants; (3) beneficiaries; or (4) other fiduciaries. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) (1982). The common interest shared by these parties is to protect the financial soundness and integrity of the plan as a whole, and not to redress particular individualized injury suffered by a single participant or beneficiary. Such matters must be resolved by recourse to the other provisions of § 502.

In sharp contrast, Congress specifically extended participants and beneficiaries a cause of action in ERISA section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B) (1982), to recover any plan benefits due them as well as to enforce or clarify their rights under a plan. Thus, contrary to the Ninth Circuit's ruling, neither ERISA's plain language, nor its legislative history, supports the proposition that a fiduciary may be held personally liable for damages to an individual under section 409, much less, for punitive damages.

Moreover, in concluding that punitive damages are encompassed within the "equitable or remedial relief" authorized by section 409, the Court of Appeals ignored this Court's prior rulings that statutory provisions aimed at providing remedial relief do not allow for such awards. *See, e.g., International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 52 (1979); *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10-12 (1940). As the Court observed in *International Brotherhood of Electrical Workers v. Foust, supra*, punitive damages by their very nature are not remedial, but rather are "private fines levied . . . to punish reprehensible conduct and to deter its future occurrence." 442 U.S. at 48 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)).[10] Accordingly, statutory provisions, like section 409, which refer solely to equitable and remedial relief, cannot support an award of punitive damages.[11]

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[10] Indeed, despite its ruling, the Ninth Circuit recognized as much:

> The primary role of punitive damages is not to compensate the victim . . . , but to punish the wrongdoer and deter others from similar misconduct.

App. at 16a.

[11] The types of remedies imposed by courts under § 409 have included removal of the fiduciary, *see* Marshall v. Snyder, 430 F. Supp. 1224, 1233 (E.D.N.Y. 1977), *aff'd in part and remanded in part*, 572 F.2d 894 (2d Cir. 1978), appointment of independent managers to invest the plan's assets, *see* Donovan v. Mazzola, 2 Empl. Ben. Cas. (BNA) 2115, 2138 (N.D. Cal. 1981), injunctions against, and rescission of transactions violative of the statute, *see* Eaves v. Penn, 587 F.2d 453, 463 (10th Cir. 1978); Gilliam v. Edwards, 492 F. Supp. 1255 (D.N.J. 1980), and prohibitions against future transactions between employee benefit plans and fiduciaries found guilty of misconduct, *see* Marshall v. Carroll, 2 Empl. Ben. Cas. (BNA) 2491, 2500 (N.D. Cal. 1980).

In much the same vein, the Ninth Circuit's holding disregards the principle, firmly rooted in American jurisprudence, that punitive damages are *not* an equitable remedy, but a traditional form of *legal* relief offered only in courts of law. *See Curtis v. Loether*, 415 U.S. 189, 196 (1974); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1364 (11th Cir. 1982); *Richardson v. Jones*, 551 F.2d 918, 927 (3d Cir. 1977); *Pearson v. Western Electric Co.*, 542 F.2d 1150, 1152 (10th Cir. 1976). That the remedies contemplated by section 409 and, indeed, ERISA as a whole are essentially equitable in nature is apparent not only from the statute's express language,[12] but also from ERISA's legislative history. That history evidences Congress' intent to construe ERISA in accordance with the law of trusts, *see* S. Rep. No. 127, 93d Cong., 1st Sess. 29 (1973); *Donovan v. Bierwith*, 680 F.2d 263, 271 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982), an area generally considered to be within the exclusive province of equity courts, *see* 3 A.W. Scott, *The Law of Trusts* § 197, at 1625 (3d ed. 1967); Restatement (Second) of Trusts 2d § 197 (1959). Indeed, based upon the characterization of ERISA's remedies as distinctly equitable, the courts have concluded with near universality that a jury trial is *not* available to participants

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[12] For example, under the civil enforcement provisions of ERISA, participants may sue alternatively "to recover benefits," to "enforce" or "clarify" rights under the plan, to redress breaches of fiduciary duty on behalf of the plan, to "enjoin" any act or practice which violates either ERISA or the terms of the plan or "to obtain other appropriate equitable relief." ERISA §§ 409(a), 502(a)(1)(B), (a)(2), (a)(3); 29 U.S.C. §§ 1109(a), 1132(a)(1)(B), (a)(2), (a)(3) (1982).

seeking relief under the statute. *See, e.g., Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980); *Wardle v. Central States Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Chastain v. Delta Air Lines, Inc.*, 496 F. Supp. 979 (N.D. Ga. 1980); *Pollock v. Castrovinci*, 476 F. Supp. 606 (S.D.N.Y. 1979), *aff'd mem.*, 662 F.2d 575 (2d Cir. 1980).

Finally, the Ninth Circuit's ruling is inconsistent with decisions interpreting analogous federal statutes which routinely have barred awards of punitive damages. Courts construing Title VII of the Civil Rights Act of 1964,[13] the Age Discrimination in Employment Act,[14] and the Labor Management Relations Act,[15] which are similar in both purpose and structure to ERISA, have concluded that punitive damages are not authorized by these statutes. A dispositive decision by this Court is necessary then both to reconcile the conflict presented by these decisions and to provide practical guidance to lower courts faced with application of these statutes.

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[13] *See, e.g.*, Walker v. Ford Motor Co., 684 F.2d 1355 (11th Cir. 1982); Shah v. Mt. Zion Hospital & Medical Center, 642 F.2d 268 (9th Cir. 1981); DeGrace v. Rumsfeld, 614 F.2d 796 (1st Cir. 1980); Harrington v. Vandalia-Butler Board of Education, 585 F.2d 192 (6th Cir. 1978), *cert. denied*, 441 U.S. 932 (1979); Richerson v. Jones, 551 F.2d 918 (3d Cir. 1977); Pearson v. Western Electric Co., 542 F.2d 1150 (10th Cir. 1976).

[14] *See, e.g.*, Pfeiffer v. Essex Wire Corp., 682 F.2d 684 (7th Cir.), *cert. denied*, 439 U.S. 1039 (1982); Vazquez v. Eastern Air Lines, Inc., 579 F.2d 107 (1st Cir. 1978); Dean v. American Security Insurance Co., 559 F.2d 1036 (5th Cir. 1977), *cert. denied*, 434 U.S. 1066 (1978).

[15] *See, e.g.*, Local 20, Teamsters Union v. Morton, 377 U.S. 252 (1964) (punitive damages not available under § 303 of LMRA); Williams v. Pacific Maritime Ass'n, 421 F.2d 1287 (9th Cir. 1970) (punitive damages not available under § 301 of LMRA); Local 127, United Shoe Workers v. Brooks Shoe Manufacturing Co., 298 F.2d 277 (3d Cir. 1962) (same).

III. The Ninth Circuit's Decision to Imply a Punitive Damages Remedy as an Addition to the Specific Remedies Set Forth in ERISA Contravenes the Teachings of this Court

The Ninth Circuit's approval of punitive damage awards under ERISA contravenes this Court's general proscription against implying additional remedies where specific limited relief is provided by statute. *See, e.g., Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981); *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981); *California v. Sierra Club*, 451 U.S. 287 (1981); *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979). ERISA contains unusually detailed and particularized enforcement provisions which do not provide for an award of punitive damages. Besides the many remedies noted earlier, participants and beneficiaries may file suit to enforce the disclosure and reporting provisions of the Act, and, in appropriate cases, courts may assess a penalty of $100 a day against administrators who fail to comply with a proper request for information. *See* ERISA section 502(a)(1)(A), (a)(4), (c), 29 U.S.C. § 1132 (a)(1)(A), (a)(4), (c) (1982). Similarly, ERISA provides for an award of reasonable attorneys' fees and costs to participants, beneficiaries or fiduciaries in instances where the court determines that such fees are warranted. ERISA section 502(g)(1), 29 U.S.C. § 1132 (g)(1). Finally, the Act provides criminal penalties for willful violations of ERISA's reporting and disclosure provisions under which imprisonment and fines up to $100,000 may be imposed. ERISA section 501, 29 U.S.C. § 1131 (1982). In view of these elaborate enforcement provisions, it is highly improbable that Congress intended to authorize by implication additional punitive damage awards against fiduciaries. *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453

U.S. at 14; *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. at 20.[16]

IV. The Question Presented by this Petition Holds Important Implications for Employee Benefit Plans and the Federal Courts

Unless reversed, the Ninth Circuit's punitive damages ruling will have significant and adverse implications both for the proper administration of employee benefit plans and the federal courts. The Department of Labor's most recent studies indicate that in the United States there are approximately 500,000 private pension plans, which alone cover over 50 million individuals, as well as an estimated 1.7 million sponsors of private employee welfare benefit plans. *See* U.S. Dep't of Labor, Labor Management Services Admin., Pension and Welfare Benefits Programs, Estimates of Participant and Financial Characteristics of Private Pension Plans at 1 (1983); 4 Health and Population Study Center, Battelle Human Affairs Research Centers, Employee Welfare Benefit

[16] Indeed, where Congress has desired to allow for punitive relief, it has not hesitated to do so. At least 14 federal statutes expressly provide for an award of punitive damages in appropriate cases. *See* Financial Institutions Regulatory and Interest Rate Control Act of 1978 § 1117(a), 12 U.S.C. § 3417(a) (1982); Securities Exchange Act of 1934 § 21, 15 U.S.C. § 78u(h) (1982); Jewelers' Liability Act § 5(c), 15 U.S.C. § 298(c) (1982); Consumer Credit Protection Act §§ 616, 706, 15 U.S.C. §§ 1681n, 1691e(b) (1982); Omnibus Crime Control and Safe Streets Act of 1968 § 802, 18 U.S.C. § 2520 (1982); Tax Equity and Fiscal Responsibility Act of 1982 § 357(a)(c), 26 U.S.C. § 7431(c) (1982); Deepwater Port Act of 1974 § 15(c), 33 U.S.C. § 1514(c) (1982); Civil Rights Act of 1968 § 812(c), 42 U.S.C. § 3612(c) (1976); Comprehensive Environmental Response, Compensation, and Liability Act of 1980 § 107(c)(3), 42 U.S.C. § 9607(c)(3) (Supp. V 1981); Railroad Revitalization and Regulatory Reform Act of 1976 § 511(j), 45 U.S.C. § 831(j) (1982); Natural Gas Pipeline Safety Act of 1968 § 12(a), 49 U.S.C. § 1679b(a) (Supp. V 1981); Transportation Safety Act of 1974 § 111(a), 49 U.S.C. § 1810(a) (1976); Pipeline Safety Act of 1979 § 209(a), 49 U.S.C. § 2008(a) (Supp. V 1981); and Foreign Intelligence Surveillance Act of 1978 § 110, 50 U.S.C. § 1810 (Supp. V 1981).

Plans and Plan Sponsors in the Private Nonfarm Sector in the United States, 1978-79 at 24 (1980). Administrators and other fiduciaries to these plans process literally millions of claims for disability, pension and health benefits on a yearly basis. The Ninth Circuit's decision, thus, can be expected to have widespread impact on the conduct of plan fiduciaries across the country. Moreover, this impact likely will have deleterious consequences which far outweigh any marginal benefit which might be achieved by permitting punitive damages awards.

As an initial matter, the threat of personal liability for punitive damages could well disrupt the reasoned decisionmaking on the part of plan fiduciaries which Congress considered so essential to ERISA. *See International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 51-52. Faced with the spectre of punitive awards of "unforeseeable magnitude," fiduciaries may feel compelled to process unjustified claims or to settle suits for benefits which they would resist under ordinary circumstances. *Id.* at 52. Thus, far from detering fiduciaries from violating their ERISA responsibilities, an award of punitive damages could well force them to transgress the very principles of prudence and reasonableness which ERISA obligates them to observe, to the financial detriment of the plan as a whole. *See* ERISA section 404, 29 U.S.C. § 1104 (1982). Moreover, the possibility of such unpredictable personal liability will deter many qualified individuals from serving as fiduciaries to employee benefit plans, particularly since insurance against punitive damage awards is unavailable in many jurisdictions.[17]

[17] ERISA expressly prohibits individuals who are employed by a participating employer, association of employers or employee organization from receiving any compensation from the plan for their additional service as plan fiduciaries. *See* ERISA § 408(c)(2), 29 U.S.C. § 1108(c)(2) (1982). As a result, many individuals receive no compensation for serving as plan fiduciaries beyond their normal salaries. Moreover, as noted above, these individuals often cannot be insured against the risk of punitive damage awards and, accordingly, would be forced to pay such awards out of their personal

Similarly, the availability of punitive damages in the benefit claims context will frustrate the orderly internal resolution of benefit claims disputes. Under ERISA section 503 and regulations promulgated thereunder, employee benefit plans are obligated to establish a reasonable claims procedure which provides for full, fair and prompt internal review of any claims initially denied by a plan. ERISA section 503, 29 U.S.C. § 1133 (1982); 29 C.F.R. § 2560.503-1 (1981). The obvious intent of this requirement is to afford both plan participants and plans alike a quick, effective and largely informal means of resolving their differences, thereby avoiding lengthy and expensive litigation. If participants may resort to litigation despite the proper functioning of these review procedures, and, indeed, obtain an award of punitive damages based on initial decisions which are later remedied, this goal will be effectively negated.

Not only will the prospect of internal resolution of disputes be sharply diminished, but the proliferation of litigation which will result from the Ninth Circuit's ruling will be substantial. Lured by the prospect of large punitive damage awards, or, at the least, the prospect of extracting a favorable settlement from fiduciaries, disgruntled participants and beneficiaries will be encouraged to litigate even the most frivolous of claims. The costs of defending the resulting flood of unnecessary litigation will be felt most, not by errant fiduciaries, but by the plans, and ultimately their participants and beneficiaries, in contravention of Congress' goal of minimizing costs and protecting the fiscal integrity of employee benefit plans. *See* ERISA section 2(a), 29 U.S.C. § 1001(a) (1982).

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resources. *See* Flaskamp & Jamar, *Insurability of Punitive Damages—Effect on Strategies and Tactics of Counsel*, in ABA, Extracontractual Damages at 121, 124 (1983). Faced with the prospect of such heavy financial penalties, with virtually no commensurate benefits, many competent individuals will have no incentive to serve as fiduciaries to employee benefit plans.

Moreover, the Ninth Circuit's decision will have the necessary effect of unleashing this torrent of litigation in the federal courts. Under ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1) (1982), the state and federal courts share concurrent jurisdiction over benefit claims actions brought by participants and beneficiaries under section 502(a)(1)(B). All other ERISA actions, including section 502(a)(2) actions for appropriate relief under section 409—the statutory predicate for punitive damages established by the Ninth Circuit—are committed by section 502(e)(1) to the *exclusive* jurisdiction of the federal courts. Because punitive damages may not be awarded under section 502(a)(1)(B), *see Bittner v. Sadoff & Rudoy Industries*, 728 F.2d 820, 825-26 (7th Cir. 1984), the inevitable consequence of the Ninth Circuit's decision will be the joinder of a claim for punitive damages under section 409 in even the most mundane benefit claims case, thereby insuring that all such actions will be litigated in the federal courts. This displacement of state court jurisdiction not only is contrary to Congress' design in fashioning ERISA's enforcement and jurisdictional provisions, but also will further tax limited federal judicial resources which might be used more efficiently in other matters.

When viewed in this context, the advisability of punitive awards pales considerably. Such awards, of course, serve no compensatory purpose, but represent mere windfalls to prevailing plaintiffs. *See International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 50; *Smith v. Wade*, 103 S. Ct. 1625, 1641 (1983) (Rehnquist, J., dissenting). Moreover, these awards historically have rested on standards which are both ill-defined and unevenly applied, *see Smith v. Wade*, 103 S. Ct. at 1642 (Rehnquist, J., dissenting), and often are assessed in "wholly unpredictable amounts bearing no necessary relation to the actual harm caused." *Gertz v. Robert*

Welch, Inc., 418 U.S. 323, 350 (1974).[18] The benefits served by inflicting this risk on individual fiduciaries, whose administration of employee benefit plans already is subject to a full panoply of statutory and regulatory provisions, including criminal penalties, simply are too insubstantial to justify the severe disruption of orderly employee benefit plan administration that inevitably will follow.

V. For the Same Reasons, the Court Should Review the Ninth Circuit's Holding on Extra-Contractual Damages

If the Court determines that review of the Ninth Circuit's punitive damage holding is appropriate, it likewise should review the lower court's conclusion that section 409 of ERISA authorizes an award of extra-contractual compensatory damages in the benefits claims context. As in the case of punitive damages, the Ninth Circuit's ruling on this issue squarely contradicts the plain language of section 409 which authorizes relief only on behalf of the plan itself, and not on behalf of plan participants or beneficiaries. Moreover, it conflicts in principle with the holdings of other courts that extra-contractual relief, such as damages for mental anguish, are not available under ERISA. *See, e.g., Bittner v. Sadoff & Rudoy Industries,*

[18] For just these reasons, any imposition of punitive damages raises grave due process concerns. As Justice Rehnquist has noted:

> [A]lthough punitive damages are "quasicriminal," their imposition is unaccompanied by the types of safeguards present in criminal proceedings. This absence of safeguards is exacerbated by the fact that punitive damages are frequently based upon the caprice and prejudice of jurors . . . . [and] "may be employed to punish unpopular defendants."

Smith v. Wade, 103 S. Ct. at 1641 (citations omitted) (quoting International Brotherhood of Electrical Workers v. Foust, 442 U.S. at 50-51 n.14); *see also* Wheeler, *The Constitutional Case for Reforming Punitive Damages Procedures*, 69 Va. L. Rev. 269 (1983).

728 F.2d 820 (7th Cir. 1984) (damages for pain and suffering not available under ERISA section 502(a)(1)(B)); *Hurn v. Retirement Fund Trust of Plumbing Industry*, 424 F. Supp. 80 (C.D. Cal. 1976) (damages for emotional distress not available under ERISA). Finally, the Ninth Circuit's ruling on this issue carries with it many of the same deleterious consequences for plan administration described in connection with punitive damages. In this regard, the same disruption of orderly plan decisionmaking and the same proliferation of litigation in general, and federal court litigation in particular,[19] can be anticipated if the decision below is permitted to stand. Accordingly, just as the availability of punitive damages under ERISA is in need of urgent clarification by this Court, so too should the related issue of extra-contractual damages be conclusively resolved.

[19] As in the case of punitive damages, claims for extra-contractual damages under § 409 cannot be pursued by a participant or beneficiary in a action pursuant to § 502(a)(1)(B), the *only* type of ERISA action that may be brought in state court. Rather, they must be pursued under ERISA § 502(a)(2) over which the federal courts have exclusive jurisdiction. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) (1982).

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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July 3, 1984

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 81-5879

DORIS RUSSELL,
Plaintiff-Appellant,

v.

MASSASCHUSETTS MUTUAL LIFE INSURANCE COMPANY,
CECILIA STEVENSON,
Defendants-Appellees.

Argued and Submitted May 6, 1982

Decided Dec. 16, 1983

Brad N. Baker, Baker & Burton, Hermosa Beach, Cal., for plaintiff-appellant.

Richard T. Davis, Adams, Duque & Hazeltine, Pasadena, Cal., for defendants-appellees.

Appeal from the United States District Court
for the Central District of California

Before FLETCHER, PREGERSON, and REINHARDT, Circuit Judges.

REINHARDT, Circuit Judge.

Doris Russell sued in California Superior Court to recover damages allegedly resulting from the termination of her employment with Massachusetts Mutual Life Insurance Company (Mutual). She also sought damages

allegedly resulting from the improper processing of her claim for employee disability benefits. Russell's complaint asserted several causes of action based on Mutual's handling of her disability benefits, including claims for breach of the statutory covenant of good faith and fair dealing under Cal. Ins. Code § 790.03(h)(5) (West Supp. 1982),[1] and breach of fiduciary duty. Russell also asserted a claim for breach of her employment contract and of the implied contractual covenant of good faith and fair dealing. Finally, she alleged the intentional and negligent infliction of emotional distress in connection with both the handling of her disability benefits and the termination of her employment. The relief sought by Russell included both compensatory and punitive damages.

Mutual removed the action to federal district court, alleging that Russell's disability causes of action relating to her benefits were preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*[2] Mutual then moved for summary judgment as to all claims. Russell opposed the motion, contending that the state causes of action relating to her disability payments were not preempted by ERISA. She also argued that if ERISA preemption applied, her causes of action could be brought under ERISA, and that compensatory and punitive damages were available under that statute. She contended that compensatory damages were not limited to any claimed loss of benefits. Russell maintained that material questions of fact existed both as to the claims based on the disability payments and those related to the termination of her employment. Finally, she urged that her claims for the infliction of emotional distress were not preempted under either ERISA or the California Workers' Compensation statute. Cal. Lab. Code §§ 3600-3601 (West Supp. 1982). Russell also expressed a desire to amend her complaint to add causes of action under 29 U.S.C. § 1132(c) (1976) and 29 C.F.R. § 2560.503-1(h) (1981), alleging that her disability claim had not been reviewed in a timely manner.[3]

The district court granted summary judgment in favor of Mutual as to all claims.[4] In determining that Russell

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[1] § 790.03(h)(5) prohibits, as an unfair and deceptive practice in the business of insurance, a failure to attempt "in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear."

[2] Both parties acknowledge that the plan under which Russell seeks benefits is an ERISA regulated plan. *See* 29 U.S.C. §§ 1002, 1003.

[3] 29 U.S.C. § 1132(c) requires a plan administrator to comply with a request by a participant for certain information within 30 days of such request. 29 C.F.R. § 2560.503-1(h) requires a fiduciary to "promptly" render a decision on a claim for benefits, setting a 60 day limit or, under special circumstances, 120 days from the plan's receipt of the request for review in which to render its decision.

[4] Because no motion or other objection to removal was ever made by any party, we need not consider the question that would otherwise be presented here: whether this case was properly removed pursuant to 28 U.S.C. § 1441. The rule governing an appellate court's inquiry subsequent to removal was stated by an unanimous Court in *Grubbs v. General Elec. Credit Corp.*, 405 U.S. 699, 702, 92 S.Ct. 1344, 1347, 31 L.Ed.2d 612 (1972): ". . . [w]here after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court." While we acknowledge that *Grubbs* differs from the case before us because there the state court's original exercise of jurisdiction was proper, that distinction is not controlling; the principle announced by the Supreme Court in *Grubbs*, applies regardless of whether the state court had jurisdiction over the matter when it was originally filed. The *Grubbs* rule has been specifically adopted by this circuit in cases where the merits are reached and determined on a motion for summary judgment. *Stone v. Stone*, 632 F.2d 740 (9th Cir. 1980) (citing cases). *See also Lockwood Corp. v. Black*, 669 F.2d 324 (5th Cir. 1982). Because we hold *infra* that appellant stated a valid cause of action under ERISA, the district court would have had original jurisdiction over appellant's claim had it originally been filed in that court.

was not entitled to relief, the court ruled, as a matter of law, that ERISA governed Russell's claims relating to the benefit plan and preempted all state actions relating to those claims. In addition, the court concluded (1) that Russell's claim for extracontractual damages and punitive damages arising out of the denial of her disability claim was barred under ERISA; (2) that Mutual complied with the provisions for review of ERISA claims pursuant to 29 C.F.R. § 2560.503-1(h) and rendered a timely decision on Russell's appeal; (3) that Mutual did not breach the employment contract of any covenant of good faith and fair dealing in connection with the termination of Russell's employment; and (4) that Cal. Lab. Code §§ 3600-3601 (West Supp. 1982) provided the exclusive remedy for intentional or negligent infliction of emotional distress arising out of the termination of employment.

We agree with the district court that Russell's state law causes of action based on Mutual's handling of her disability claim are preempted by ERISA. We hold, however, that a cause of action exists under ERISA for a breach of fiduciary duty based on an alleged improper or untimely handling of benefit claims. We also hold that ERISA permits the award of compensatory damages proximately caused by such a breach of fiduciary duty and that such damages are not limited to the amount of any benefit loss. We further hold that, in appropriate circumstances, the statute allows the granting of punitive damages. Next we hold that summary judgment was improper both as to Russell's claims regarding the benefits plan and her pendent state claims regarding the termination of her employment. Finally, we reverse the district court's holding that Russell's exclusive remedy for the intentional infliction of emotional distress resulting from her termination of employment is under the California Workers' Compensation statute, Cal. Lab. Code §§ 3600-3601 (1982).

BACKGROUND

Russell was employed by Mutual for 15 years as a group claims examiner in Mutual's Los Angeles office. In May 1979, she took a leave of absence because of a disabling back ailment allegedly caused by stress. Russell submitted a report from her chiropractor, Dr. Allred, in support of her claim for disability benefits under Mutual's Employee Salary Continuance Plan (ESCP), and Mutual started to pay benefits under two plans, the ESCP and the Employee Disability Plan (EDP). The ESCP is funded from the assets of the company and provides disability benefits based upon a percentage of the employee's salary. The EDP provides benefits only if the employee is disabled for at least eight weeks and has exhausted all benefits under ESCP. Neither plan involves an insurance policy. Both plans qualify as benefit plans under ERISA. *See supra* note 2.

In August 1979, Russell's claim for disability was taken before Mutual's Disability Committee, composed of Mutual's chief medical director and four other officers of the company.[5] Noting that Russell had taken leaves of absence in 1967 and 1977 due to psychiatric and psychosomatic illnesses causing back pain, the Committee recommended that an independent medical examination be performed by an orthopedic specialist, Dr. Rosco, to verify Russell's injury. On September 18, 1979, Dr. Rosco examined Russell and concluded that she was not, from an orthopedic standpoint, physically disabled. Based

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[5] We note that Russell has claimed, and Mutual does not deny, that Mutual is a fiduciary under ERISA and thus subject to the fiduciary duties and responsibilities imposed by the Act. Under 29 U.S.C. § 1002(21)(A) (1976), a person is a fiduciary to the extent that "(i) he exercises *any* discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan . . . ." (Emphasis added).

solely on this report, the Committee determined that Russell's disability salary benefits should be terminated.

Mutual also decided to fire Russell. Mutual argues that this decision was based on an understanding by Cecilia Stevenson, Russell's supervisor, that Russell was unwilling to relocate to the new group claims department in Hacienda Heights, California. Russell contends that she was never asked directly about her intentions regarding the new office, and that she never stated that she definitely would not relocate. On October 17, 1979, Russell was advised by letter that both her salary continuance benefits and her employment would be terminated.

On October 22, 1979, Russell sent a letter to Mutual requesting an appeal of the decision as to salary continuance benefits. She maintained that her benefits claim should be reviewed on the basis of her entire medical record, psychological as well as physical. The request for appeal was received by the plan administrator, Robert Johnson, sometime between October 25 and October 30, 1979. Mutual requested additional information with respect to Russell's allegations of psychosomatic illness.

Prior to and during this appeal process Russell's husband, Ronald, who worked for a different employer, was also disabled and without salary. Russell contends that, because of the financial duress, she and her husband were forced to cash out his retirement savings plan. The economic loss of lifetime benefits from the retirement plan, Russell argues, is a result of Mutual's wrongful denial of her disability claim.

On November 27, 1979, Russell produced the additional information regarding her appeal, including a report from Russell's psychiatrist, Dr. Ziferstein, who had determined that Russell's back pains were caused by psychological problems. Johnson submitted this new evidence to the Committee for review. The committee then scheduled another independent medical examination of Russell,

this time with Dr. Faerstein, a psychiatrist. Faerstein also concluded that Russell was temporarily disabled because of a psychiatric illness.

Based on this additional information, Russell's employment status and salary continuance benefits were reinstated as of March 11, 1980. Russell has since been paid all salary continuance benefits due and is presently receiving long-term disability benefits under Mutual's disability plan. Russell filed this action to recover damages she claims to have suffered as a direct result of Mutual's alleged untimely and improper handling of her disability claim and its alleged wrongful termination of her employment.

I. ERISA PREEMPTION OF STATE LAW CLAIMS

Recognizing the increasing growth, scope and complexity of private employee benefit plans throughout the United States and the inadequacy of the existing standards governing these plans, Congress determined that it was necessary to enact a comprehensive legislative scheme to remedy the problems and afford security, stability, and uniformity in the area. 29 U.S.C. § 1001(a). To provide for the financial soundness and the fair and equitable administration of such plans, ERISA was enacted in 1974. 29 U.S.C. § 1001(a) (1982).

Our inquiry here is whether Russell's state law causes of action based on Mutual's processing of her disability claim under an ERISA regulated benefit plan are preempted and, if so, whether ERISA provides Russell with an actionable claim against Mutual, as a fiduciary.

The broad statutory language offers considerable guidance as to the preemptive scope of ERISA. Section 1144 provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter *relate to any employee benefit plan* . . . ." 29 U.S.C. § 1144(a) (1982)

(emphasis added).[6] The legislative history of ERISA indicates that the Act was intended as a comprehensive regulatory scheme, with the broad preemptive language of section 1144 intentionally designed to provide complete protection to plan funds and participants by establishing national uniformity in the regulation of employee benefit plans. In short, "[t]he emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required . . . the displacement of State action in the field of private employee benefit programs." 120 Cong. Rec. 29,942 (1974) (Statement of Senator Javits). *See also* 120 Cong. Rec. 29,933 (1974) (statement of Senator Williams).

Noting the breadth of federal preemption permitted by ERISA, the Supreme Court recently held that a state law "relates to" an employment benefit plan "if it has a connection with or reference to such a plan." *Shaw v. Delta Airlines, Inc.* —— U.S. ——, ——, 103 S.Ct. 2890, 2900 (1983). Since the state laws here involved authorize state causes of action for the improper handling of claims under benefit plans, there is a direct connection between the state laws and the employment benefit plan. *See also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S.Ct. 1895, 1906, 68 L.Ed.2d 402 (1981). We therefore hold that Russell's state causes of action relating to her disability claim are preempted.

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[6] ERISA sets forth several specific exceptions to the broad preemptive scope of section 1144(a). Section 1144(b)(2)(A) provides that ERISA does not exempt or relieve "any person from any law of any State which regulates insurance, banking, or securities." ERISA also preserves state regulation of "generally applicable criminal laws of a State." Section 1144(b)(4). Fnally, ERISA does not supersede state regulation in other areas, (e.g. antidiscrimination laws) where the state law is coextensive with federal law, *see Shaw v. Delta Airlines*, —— U.S. ——, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983) (state employment laws which provide a means to enforce Title VII are not preempted).

II. ERISA CAUSE OF ACTION

ERISA, though preempting Russell's state causes of action, provides a federal cause of action for the breach of certain fiduciary duties by those administering benefit plans. The question, then, is whether Mutual's alleged mishandling of Russell's claim for disability benefits would constitute a breach of fiduciary duty under the Act and, if so, whether it is the type of breach that gives rise to a cause of action by a plan beneficiary.

Section 1132 is the civil enforcement portion of ERISA. Section 1132 provides in relevant part that:

> (a) A civil action may be brought—
>
> ....
>
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under § 409 [29 U.S.C. § 1109];

Section 1109(a) provides in part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title . . . shall be subject to such other equitable or remedial relief as the court may deem appropriate. . . .

Thus a beneficiary or participant may, pursuant to section 1132(a)(2), bring a cause of action under section 1109(a) for the breach by a fiduciary of any responsibility, duty or obligation imposed by the Act, assuming, of course, that the breach causes him some injury.

ERISA is a remedial statute enacted "to protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions and ready access to the Federal courts." 29 U.S.C. § 1001(b). The Act imposes a comprehensive scheme of fiduciary duties and responsibilities

for managing and administering plan funds that "provid[e] benefits to participants and their beneficiaries." 29 U.S.C. § 1104(a)(A)(i). Protection from fiduciary conduct that violates these duties is necessary to implement Congress' express policy of imposing "strict fiduciary obligations upon those who exercise management or control over the assets or *administration* of an employee pension or welfare plan," 3 U.S. Code Cong. & Ad. News at 5177-78 (1974) (emphasis added), and "providing for appropriate remedies and sanctions" for the breach of such duties. 29 U.S.C. § 1001(b).

In light of this explicit congressional policy, we find that ERISA regulates fiduciary conduct not only in the care and management of plan assets, but also in the handling and disposition of claims. It would be unreasonable to conclude that Congress provided a comprehensive fiduciary scheme designed to "occupy the field" with respect to protecting the interests of participants and their beneficiaries under pension and benefit plans without also providing for the fair and proper handling of claims. Moreover, ERISA was intended to serve as a substitute for various existing state protective laws and regulations. *See supra* at 5889, at 487. It would be anomalous if Congress eliminated the protections offered by state law without providing comparable federal protections. We therefore believe that Congress intended to provide a comprehensive scheme of fiduciary responsibilities and duties encompassing both the management of plan assets and the handling and processing of participant's claims and to afford remedies for violation of those responsibilities, obligations and duties.

Under the standard of conduct required by ERISA, a fiduciary must process claims in good faith, and in a fair and diligent manner. A failure to render a decision on a benefit claim "promptly" and within the time periods prescribed by the Secretary of Labor constitutes a breach of duty. *See* 29 U.S.C. § 1135, 29 C.F.R. § 2560.503-1(h).

ERISA sets forth rules governing the handling of claims that must be followed by the fiduciaries of each covered plan. The plan must, in accordance with regulations to be adopted by the Secretary of Labor,

> (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

29 U.S.C. § 1133.

Pursuant to section 1135, the Secretary has issued implementing regulations imposing strict obligations on those responsible for the handling of benefit claims. 29 C.F.R. § 2560.503-1(h) requires that a decision be made "promptly," *and* not later than 60 days or, under special circumstances, up to 120 days from "receipt of a request for review." A violation of this obligation would, in our opinion, give rise to a section 1109(a) cause of action by a beneficiary or participant, pursuant to the provisions of section 1132(a)(2).

The record shows that the plan administrator received Russell's "request" for review around October 25, 1979 and acknowledged receipt in a letter to Russell dated October 30. Russell's claim was not resolved until March 11, 1980, at least 132 days after the acknowledged receipt of the request for review. Even assuming that "special circumstances" existed, this exceeds the 120 day limit.

Mutual argues that the time period started when Russell submitted all of the medical information requested by the plan administrator. However, the time period under the provision runs from the time of "receipt of a

request for review," not the time when all information requested has been forwarded. Otherwise the administrator could always extend the statutory deadline by requesting additional information. Moreover, Mutual has not alleged that Russell failed to act reasonably or diligently in forwarding information to the plan administrator.

We do not know whether there are other arguments that Mutual can make in an attempt to show that it did not violate the timeliness requirement, and we need not make a final determination. On remand, the district court should consider the preceding analysis in deciding whether Mutual handled Russell's claim in a timely manner. Moreover, adherence to the specific time requirements is not the only obligation imposed by ERISA in connection with the handling of benefit claims. We also hold that processing claims in a perfunctory or arbitrary manner or in bad faith, or without the exercise of reasonable care, constitutes a breach of fiduciary duty under ERISA, and that such breaches, like a timeliness breach, give rise to a cause of action under the statute.[7] On remand, the district court should further consider here the extent to which Mutual knew or should have known pertinent facts concerning Russell's medical history and whether Mutual should have considered any of those facts before denying her benefit claim; nor need we consider whether Mutual failed in any other way to process

[7] Although some parts of the standard are identical to those used in breach of the duty of fair representation cases, (*Vaca v. Sipes*, 386 U.S. 171, 192, 87 S.Ct. 903, 918, 17 L.Ed.2d 842 (1967); *Robesky v. Qantas Empire Airways Ltd.*, 573 F.2d 1082, 1089-90 (9th Cir. 1978)), we do not suggest that the standard in its entirety should be the same. There are significant differences between the role of a union official who is attempting to decide whether an individual's grievance should be taken to arbitration under a collective bargaining agreement, or who may even be attempting to handle a complex arbitration proceeding himself, and the role of a fiduciary who is required to provide benefits under a pension or disability plan. Accordingly, we believe ERISA may require a stricter standard.

Russell's claims in a manner consistent with its statutory obligations.

III. COMPENSATORY DAMAGES

The district court determined that ERISA precluded extracontractual damages for breach of fiduciary duty under the Act. We disagree. In our view, ERISA allows beneficiaries to sue for compensatory damages proximately caused by a breach of fiduciary duty. Such damages are not limited to the amount of any benefit loss.

We have held, *supra* at p. 488, that under section 1132(a)(2) a participant or beneficiary may institute a section 1109(a) action as the result of a fiduciary's breach of a responsibility, duty or obligation imposed by the statute. Section 1109 provides that a court may award any "equitable or remedial relief as [it] may deem appropriate" against a fiduciary who breaches its duties.[8] The damage provision is extremely broad, and the court is given wide discretion as to the damages to be awarded. It may award any equitable or *remedial* relief it deems appropriate.

We believe it clear that ERISA permits an award of compensatory damages that will remedy the wrong and make the aggrieved individual whole. Such a reading has found nearly unanimous support in recent decisions which hold that section 1109 provides courts with substantial discretion to fashion appropriate relief, including compensatory damages. *Jiminez v. Pioneer Diecasters*, 549 F.Supp. 677, 681 (C.D.Cal. 1982); *Free v. Gilbert Hodgman, Inc.*, 3 Emp.Ben.Cas. (BNA) 1010, 1012 (N.D.Ill. 1982); *Bobo v. 1950 Pension Plan*, 548 F.Supp. 623, 626 (W.D.N.Y. 1982); *Eaton v. D'Amato*, 3 Emp.Ben.Cas. (BNA) at 1007; *Pension Plan and Trust*, 317 Pension

[8] Liability under § 1109 is against the fiduciary personally, not the plan. However, we note that ERISA does allow for certain forms of fiduciary indemnification under section 1110.

Rep. (BNA) A-13, A-17 (C.D.Cal. 1980); *Bittner v. Sandoff and Rudoy Industries*, 490 F.Supp. 534, 536 (E.D.Wis. 1980). Support for the allowance of compensatory damages is also found in the legislative history of ERISA. *See* H.R.Rep. No. 93-533, 93d Cong., 1st Sess. 17, *reprinted in* 1974 U.S.Code Cong. & Ad.News 4639, 4655; S.Rep. No. 93-127, 93d Cong., 1st Sess. 35, *reprinted in* 1974 U.S.Cong. & Ad.News 4838, 4871.

In referring to compensatory damages necessary to make a party whole, we are not referring merely to contractual damages for loss of plan benefits. Rather, section 1109 provides for relief that will compensate the injured party for all losses and injuries sustained as a direct and proximate cause of the breach of the fiduciary duty. A contrary reading would conflict with the language of the statute and provide little encouragement to fiduciaries to abide by the Act, since the most that could be forfeited in the event of misconduct would be benefits already owed by the plan. More important, a fiduciary could ignore or unreasonably perform its duties and responsibilities with respect to the disposition of claims with virtual impunity and at the sole cost of the participant who has suffered harm as a result of such misconduct. We believe that Congress did not intend to afford such fiduciary immunity. Rather, by giving courts broad discretion to grant relief, Congress intended to provide adequate redress to participants who are injured as a result of a fiduciary's breach of its obligations.

Although we find it unnecessary to fashion a more specific rule on compensatory damages, we add that damages for mental or emotional distress accompanied by some physical manifestation are recoverable under section 1109. Here, Russell contends that her pre-existing back problem, which had been originally caused by psychosomatic illness, was aggravated as a result of the emotional distress caused by the improper and untimely handling of her benefit claim. Thus, we need not consider whether the absence of a physical effect would in any way affect our conclusion. We also hold, however, that ERISA does not give rise to a separate cause of action for negligent or intentional infliction of emotional distress. There is no mention in the statute or the legislative history of any such cause of action, and we do not believe that Congress intended to provide one.

IV. PUNITIVE DAMAGES

The district court also decided that ERISA does not authorize the award of punitive damages for the breach of fiduciary duty under the Act. We reverse and hold that it does, under appropriate circumstances. We note that the question whether punitive damages are authorized by ERISA has provoked much controversy and a split in the published decisions. *Compare Jiminez v. Pioneer Diecasters*, 549 F.Supp. at 680 (punitive damages allowed against fiduciary under section 1109); *Free v. Gilbert Hodgman, Inc.*, 3 Emp. Ben. Cas. (BNA) at 1010, 1012 (punitive damages recoverable against fiduciaries under section 1109); *Short v. Junior Steel Co. Employees Pension Plan and Trust*, 317 Pension Rep. (BNA) at A-17 (punitive damages recoverable against fiduciary under section 1109; *Eaton v. D'Amato* 3 Emp. Ben. Cas. (BNA) 1003, 1007 (punitive damages recoverable against fiduciary under section 1109(a)); *Bittner v. Sadoff & Rudoy Industries*, 490 F.Supp. at 536 (punitive damages not excluded under section 1140 and 1132) *with Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1216 (8th Cir. 1981), *cert. denied*, 454 U.S. 968 and 1084, 102 S.Ct. 512 and 641, 70 L.Ed.2d 384 and 619 (punitive damages not provided for in ERISA (dictum)); *Hoskins v. Retirement Plan of Standard Oil*, 78-C3670 (N.D. Ill. 1962) (punitive damages not recoverable against fiduciary under section 1132(a)(3)(B)); *Hurn v. Retirement Fund Trust*, 424 F.Supp. 80, 82 (C.D. Cal. 1976) (section 1132 does not authorize punitive damages; *Bell v. Southern Oregon Log Scaling and*

Grading Bureau, 130 Pension Rep. (BNA) D-6 (D. Or. 1976) (punitive damages not recoverable against fiduciary under section 1132(a)(3)(B)); *Wardle v. Southeast and Southwest Areas Pension Fund*, No. 77-144-C, 239 Pension Rep. (BNA) D012 (S.D. Ind. 1979) (punitive damages not recoverable under section 1132(a)(3)(B)).

The primary role of punitive damages is not to compensate the victim of intentional wrongdoing, but to punish the wrongdoer and deter others from similar misconduct. Nevertheless, much of what we said earlier in our discussion of compensatory damages is applicable as well to the question whether the Act permits an award of punitive damages, particularly our comments concerning the broad discretion given to the courts under section 1109(a) to fashion appropriate relief.

One of the methods that Congress selected to ensure compliance with the Act was to provide for the imposition of "sanctions" against those violating their fiduciary duties. 29 U.S.C. § 1001(b). Moreover, according to both the Senate and House Committee reports, Congress intended the Act to provide "the full range of legal and equitable remedies available in both state and federal courts." H.R. Rep. No. 93-533, 93d Cong., 1st Sess. 17, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4639, 4655, Sen. Rep. No. 93-127, 93d Cong., 1st Sess. 35, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4838, 4871. We see no reason for believing that Congress intended to exclude the sanction of punitive damages from this full range of legal and equitable relief. Furthermore, those same two reports tell us that the Act's "enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with *broad remedies for* redressing or *preventing violations* of the Act." H.R. Rep. No. 93-533, 93d Cong., 1st Sess. 17, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4639, 4655, Sen. Rep. No. 127, 93d Cong., 1st Sess. 35, *reprinted in* 1974 U.S. Code Cong. & Ad. News 4838, 4871

(emphasis added). The availability of punitive damages serves a deterrent or preventive purpose. Violations are less likely to occur if those handling the funds know that they may be subject to heavy financial penalties when their conduct warrants it.

We also reach our conclusion, in part, because of the analysis we applied in resolving an identical question with respect to an analogous statute, the Landrum-Griffin Act, 29 U.S.C. § 412 (1976). We held that the Landrum-Griffith Act authorizes the award of punitive damages in appropriate circumstances because such awards "would serve [as] 'a deterrent to those abuses which Congress sought to prevent.'" *Cooke v. Orange Belt District Council of Painters*, 529 F.2d 815, 820 (9th Cir. 1976) (citation omitted). Landrum-Griffith like ERISA does not specifically mention punitive damages. In the case of Landrum-Griffin we held that the statute authorizes the award of punitive damages even though "the legislative history of the Landrum-Griffin Act is not all that clear (and is probably inconclusive)." *Bise v. International Brotherhood of Electrical Workers*, 618 F.2d 1299, 1305 n. 6 (9th Cir. 1979), *cert. denied*, 449 U.S. 904, 101 S.Ct. 279, 66 L.Ed.2d 136 (1980). We found such damages to be authorized because "it may be said that the overall thrust of the Act was to protect the individual rights of union members and to deter abuse and denial thereof by union officers. The awarding of punitive damages will, in proper cases, serve this purpose." Id. at 1305 n. 6. We think that the reasoning of *Cooke* and *Bise* is equally applicable here.

Although we hold that punitive damages may be awarded for a breach of duty by a plan fiduciary, such awards may be made in only very limited circumstances. These circumstances require a showing that the fiduciary, in carrying out its duties and responsibilities under the Act, acted with actual malice or wanton indifference to the rights of a participant or beneficiary. *See, e.g., Bise,*

618 F.2d at 1305. We intimate no view here as to Russell's right to recover punitive damages based on any specific allegations in her complaint in its present form, or as it may be amended.

V. EMPLOYMENT CONTRACT

Russell contends that she was wrongfully terminated by Mutual because an implied contract existed between the parties, and Mutual violated its duty of good faith and fair dealing by firing Russell without good cause.[9] The district court found that no implied employment contract existed and that there was no lack of good faith and fair dealing. Thus, it granted Mutual's motion for summary judgment. We find that summary judgment as to these issues was inappropriate.

Section 2922 of the California Labor Code provides, in pertinent part, that "employment, having no specified term, may be terminated at the will of either party on notice to the other." Russell concedes that no express or written employment contract existed here. She argues instead that an implied contract existed and thus that Mutual could not discharge her except for good or just cause. In *Pugh v. See's Candies, Inc.*, 116 Cal. App.3d 311, 171 Cal. Rptr. 917 (1981), the California court of appeals held that although no written contract existed, the plaintiff had established a prima facie case of wrongful discharge based on an implied contract of employment. The employer was thus required to show "good cause" for the termination of the plaintiff's employment.

[9] We have pendent jurisdiction over Russell's common law claims for wrongful discharge, breach of implied covenant of good faith and fair dealing and damages. With respect to these claims, Mutual and Russell's immediate supervisor, Stevenson, were named as defendants. However, Russell alleges Stevenson was working within the scope of her employment with Mutual. Hence, for purposes of this apppeal we will refer to the collective defendants as "Mutual."

In making its determination, the court reviewed the totality of the parties' relationship, including "the duration of [plaintiff's] employment, the commendations and promotions he received, the apparent lack of any direct criticism of his work, the assurances he was given, and the employer's acknowledged policies." *Id.* at 329, 171 Cal. Rptr. 917.[10]

The allegations and affidavit submitted by Russell contend that she was employed by Mutual for 15 years as a claims examiner. Russell had allegedly been one of the top producers in the office for the last eight years and top in sales from 1973-1977. Moreover, she claims that she was commended for her work on several occasions and received no written or formal criticism during the entire course of her employment with Mutual.

The record before us suggests that Mutual's decision to fire Russell was based on Russell's alleged refusal to relocate. However, there is conflicting evidence as to whether Russell ever actually *refused* to relocate or even gave Mutual such an impression.

Where there is any issue of material fact to be tried, summary judgment must be denied. *Hepp v. Lockheed-California Co.*, 86 Cal. App.3d 714, 717, 150 Cal. Rptr. 408 (1978). Under *Pugh*, an implied promise that Mutual would not act arbitrarily with its long-time em-

[10] In *Cleary v. American Airlines, Inc.*, 111 Cal.App.3d 443, 168 Cal.Rptr. 722 (1980) the court, focusing on the 18 years of satisfactory employment performed by the plaintiff, stated that termination "of employment without legal cause after such a period of time offends the implied in law covenant of good faith and fair dealing contained in all contracts, including employment contracts." *Id.* at 455, 168 Cal.Rptr. 722. Though the court in *Pugh* did not rest its finding on an implied covenant of good faith and fair dealing, it did consider the duration of satisfactory employment as a factor in determining whether an "employer's conduct gave rise to an implied promise that it would not act arbitrarily" in dealing with its employee. *Pugh v. See's Candies* at 329, 171 Cal.Rptr. 917.

ployee may be "shown by the acts and conduct of the parties, interpreted in light of the subject matter and of the surrounding circumstances." *Pugh v. See's Candies*, 116 Cal. App.3d at 329, 171 Cal. Rptr. 917. Viewing the evidence in a light most favorable to Russell, we find that a material question of fact exists as to whether there was such an implied promise from Mutual to Russel, and, if so, whether there was good cause for the latter's termination. It is for the trier of fact to make these determinations. Hence summary judgment was inappropriate.

V. CALIFORNIA WORKER'S COMPENSATION LAWS

Russell alleges causes of action for negligent and intentional infliction of emotional distress arising both from Mutual's handling of her claim for disability benefits and from the termination of her employment. The district court found that the claims were preempted—those relating to disability benefits by ERISA and those relating to termination by the California Workers' Compensation Law, Cal. Lab. Code §§ 3600-01 (West 1983).

As to Russell's claims for negligent and intentional infliction of emotional distress arising from the handling of her disability benefits, we affirm. Those claims are preempted by ERISA and there is no parallel federal cause of action under the statute.

The district court correctly held that Russell's claims for negligent infliction of emotional distress arising from the termination of her employment are barred by the California Workers' Compensation Laws. We disagree, however, with the district court's holding that Russell's claims for intentional infliction of emotional distress are similarly barred.

Russell maintains that the claim for intentional infliction of emotional distress arising out of the termination of her employment is not preempted by the Workers' Compensation laws because the injuries alleged—emotional anguish, anger, humiliation and feelings of betrayal—did not arise out of the course and scope of employment, are non-physical and thus non-compensable under the Act, and are the result of Mutual's intentional tortious acts.

For purposes of workers' compensation preemption, we must first determine whether the injuries alleged arose out of and in the course of Russell's employment relationship with Mutual. *See generally Renteria v. County of Orange*, 82 Cal. App.3d 833, 835, 147 Cal. Rptr. 447 (1978). California's courts have held that an injury in the form of emotional distress caused by termination of employment is within the course and scope of an employment relationship even when the emotional distress occurs subsequent to the date of termination. *Ankeny v. Lockheed Missiles and Space Co.*, 88 Cal. App.3d 531, 534, 151 Cal. Rptr. 828 (1979); *Gates v. Trans Video Corp.*, 93 Cal. App.3d 196, 201-03, 155 Cal. Rtpr. 486 (1979). We thus find that Russell's alleged injuries arose out of and in the course of her employment relationship with Mutual.

However, finding that the activity was within the scope of the employment relationship for purposes of the Workers' Compensation statute does not end our inquiry. For, as Russell correctly points out, mental anguish absent any physical injury is not a compensable injury under California's Workmen's Compensation laws. Thus, she argues, because Workers' Compensation does not provide a remedy for such an injury, she is not precluded from bringing an action for damages. Here, however, Russell claims a physical injury, aggravation of her pre-existing back condition. Therefore, this argument is of no assistance to her. Finally, Russell says, under California law injured persons are afforded the right to institute civil actions for intentional infliction of emo-

tional distress, regardless of whether they are also entitled to proceed under the Workers' Compensation statute. We decide only that she is correct in at least one part of her argument—under California law, tort actions lie for intentional infliction of emotional distress, and such actions are not preempted by the Workers' Compensation statute.

In *Renteria v. County of Orange*, 82 Cal. App.3d 833, 147 Cal. Rptr. 447 (1978) an employee filed an action for intentional and negligent infliction of emotional distress, claiming that he had been tormented and harassed by his employer and fellow employees. The trial court sustained the defendant's demurrer on the ground that the Workers' Compensation Board had exclusive jurisdiction over the matter. The court of appeal reversed, holding that "an employee's cause of action for intentional infliction of emotional distress constitutes an implied exception to the exclusive remedy provisions of Labor Code section 3601." *Id.* at 842, 147 Cal. Rptr. 447. In reaching its holding, the court of appeals emphasized the fact that the deterrent function of the law would not be properly served by limiting recovery to an award under the essentially "no fault" Workers' Compensation system. The court suggested that imposing civil liability for intentional wrongdoing furthers the objective of deterring such acts.

In *Gates v. Trans Video Corp.*, 93 Cal. App.3d 196, 201-203, 155 Cal.Rptr. 486 (1979) (and in *Ankeny v. Lockheed Missiles & Space Company*, 88 Cal. App.3d 531, 534-36, 151 Cal. Rptr. 828 (1979), two cases relied on by Mutual, the California Courts of Appeals held that Workers' Compensation is the exclusive remedy when a plaintiff's injury involves both emotional and physical components, thereby narrowly construing *Renteria* as applicable only to injuries of an exclusively emotional nature that result in no physical manifestations.

Here, Russell alleges not only emotional stress but physical injury in the form of aggravated back problems.[11] Thus, if *Gates* and *Ankeny* accurately reflect the law of California as the state Supreme Court would apply it, Russell's claim for damages for emotional distress would be preempted by the Workers' Compensation statute. We do not believe, however, that the *Gates-Ankeny* reading of *Renteria* is correct, or that it would be adopted by the California Supreme Court.

Two later state appeals court decisions have substantially undermined the *Gates-Ankeny* reading of *Renteria*. In *Lagies v. Copley*, 110 Cal. App.3d 958, 168 Cal. Rptr. 368 (1980), the court of appeals refused to confine *Renteria's* application to cases involving only emotional injury. Instead, taking its lead from pronouncements by the California Supreme Court, it rejected the artificial distinction between physical and psychological injury, citing *Molien v. Kaiser Foundation Hospital*, 27 Cal.3d 916, 616 P.2d 813, 167 Cal.Rptr. 831 (1980). It held *Renteria* applicable, even though the plaintiff alleged "accompanying physical disability," 110 Cal. App.3d at 971, 168 Cal. Rptr. 368.

In *McGee v. McNally*, 119 Cal. App. 3d 895, 174 Cal. Rptr. 253, (1981), another court of appeals, in a decision joined by Justice Grodin, now of the California Supreme Court, also minimized the *Ankeny-Gates* distinction between emotional injury and emotional injury accompanied

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[11] Pre-existing physical conditions, such as Russell's psychosomatic disability and accompanying back pains, which are aggravated by activities within the course of employment have been held to be compensable under California's Workers' Compensation statute. The California Supreme Court held that "[a] disability that is in part attributable to a pre-existing disease is nonetheless compensable so long as a worker's employment played *any* contributing role in either *aggravating* the progressive [condition] or in hastening [its] occurrence." *City & County of San Francisco v. Workers' Compensation App. Bd.*, 22 Cal.3d 103, 115, 583 P.2d 151, 148 Cal.Rptr. 626 (1978). (Emphasis added).

by physical effects. The court of appeals in *McGee* restated the *Renteria* holding, verbatim, and adopted the essential reasoning underlying the holding.

Although there is language in *Renteria* and *McGee*, such as the reference to "make weight" injuries, that makes the analysis somewhat less than crystal clear, we think it evident that the *Renteria-McGee* courts were saying in essence that where the primary injury is emotional distress, and that is the gist of the complaint, a cause of action in intentional tort lies, regardless of whether the emotional distress also manifests itself physically in some way or causes some physical disability.

Of equal importance, the court of appeals in *McGee* echoed the policy concern voiced in *Renteria*, that emotional injuries resulting from deliberate wrongdoing must be actionable at civil law—outside the confines of Workers' Compensation—if the deterrent function of the law is to be served. *McGee* pointed to the California Supreme Court's discussion in *Johns-Manville Products Corp. v. Superior Court*, 27 Cal. 3d 465, 612 P.2d 948, 165 Cal. Rptr. 858 (1980), of "a trend toward allowing an action at law for injuries suffered in the employment if the employer acts deliberately for the purpose of injuring the employee . . . ." *McGee*, 119 Cal. App. 3d at 895, 174 Cal. Rptr. 253. *McGee* also stressed the fact that both the majority and dissenting opinions in *Johns-Manville* expressed approval of *Renteria*.

In an effort to strengthen the deterrent function of liability rules, the trend towards increasing the sanctions imposed on wrongdoers is gaining favor in a variety of contexts as courts recognize that compensation of victims is only part of the purpose of tort liability. *See, e.g., Hartford Accident & Indemnity Co. v. Village of Hempstead*, 48 N.Y.2d 218, 228, 397 N.E.2d 737, 744, 422 N.Y.S.2d 47, 53-54 (1979), (New York public policy prohibits insurance coverage of punitive damages awarded against municipal officers under 42 U.S.C. § 1983 to

foster deterrent objective). *See generally*, G. Calabresi, *The Cost of Accidents* 39-40 (1970); Stone, *The Place of Enterprise Liability in the Control of Corporate Conduct*, 90 Yale L.J. 1 (1980).

It is significant that *McGee*, which substantially undermines the reasoning of *Ankeny* and *Gates*, was decided by the same district court of appeals that decided *Ankeny*. Thus, in only one of California's five appellate districts is there currently a controlling decision that purports to limit the *Renteria* holding. We believe that *Renteria* reflects the law as the California Supreme Court would find it; we restate its holding verbatim, and adopt it here: "An employee's cause of action for intentional infliction of emotional distress constitutes an implied exception to the exclusive remedy provision of Labor Code Section 3601." *Renteria*, 147 Cal. Rptr. at 452. We therefore hold that California's Workers' Compensation laws do not constitute Russell's exclusive remedy for the alleged intentional infliction of emotional distress by her employer.[12]

Affirmed in part; reversed in part; remanded for further proceedings consistent with this opinion. Upon remand, plaintiff should be allowed to amend her complaint to plead such causes of action as may be appropriate in light of this opinion.

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[12] Ordinarily we would give some deference to the district court's judgment as to how the California Supreme Court would interpret the California statute. *See, e.g., Major v. Arizona State Prison*, 642 F.2d 311, 313 (9th Cir. 1981); *United States v. County of Humboldt*, 628 F.2d 549, 551 (9th Cir. 1980). Here, however, we give the district court's conclusions little, if any, weight. The district court cited no cases, California or otherwise, to support its conclusions. Nor did the district court prepare those conclusions itself, a practice we have previously expressed our disapproval of.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-81-116-R

DORIS RUSSELL AND RONALD RUSSELL,
Plaintiffs,

vs.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, CECILIA STEVENSON and DOES 1 through 50, inclusive,
Defendants.

Date: August 17, 1981

Time: 10:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[Filed Aug. 24, 1981]

The Motion for Summary Judgment of defendants Massachusetts Mutual Life Insurance Company ("Massachusetts Mutual") and Cecilia Stevenson ("Stevenson") came on regularly for hearing on August 17, 1981, before the Honorable Manuel L. Real, United States District Judge. Plaintiff Doris Russell appeared by her attorneys of record, Baker & Burton, by Brad N. Baker, Esq. Massachusetts Mutual and Stevenson appeared by their attorneys of record, Adams, Duque & Hazeltine, Richard T. Davis, Jr., Esq. and David L. Bacon, Esq. The Court, having heard oral argument and having duly considered the memoranda submitted by the parties, the affidavits submitted by Massachusetts Mutual and Stevenson, the deposition of plaintiff, Doris Russell, and all of the records and files herein, to which there is no material issue, now makes its Findings of Fact and Conclusions of Law as follows:

1. Plaintiff was employed by defendant Massachusetts Mutual as a group claims examiner in its Los Angeles office.

2. Massachusetts Mutual has created two employee benefit plans, the "Employee Salary Continuance Plan" and the "Employee Disability Plan," providing disability benefits to certain of its employees. The Salary Continuance Plan is funded from the general assets of the Company and there is no insurance policy, either internally or with a third party, involved whatsoever. Both plans qualify as benefit plans under the Employee Retirement Income Security Act of 1974 ("ERISA") and copies of both of the plans were filed with the United States Department of Labor as required by ERISA.

3. In May 1979, plaintiff became ill and unable to work, and has never returned to work. Plaintiff submitted claims for benefits under the Employee Salary Continuance Plan and Massachusetts Mutual commenced paying benefits.

4. On October 17, 1979, based on a report dated September 18, 1979, by Dr. Michael E. Rosco, Massachusetts Mutual determined that plaintiff was not disabled from performing her duties as a claims examiner. Furthermore, based upon reports received from plaintiff's immediate supervisor, Cecilia Stevenson, Massachusetts Mutual had an understanding that plaintiff was unwilling to relocate to the new group claims office in Hacienda Heights. On October 17, 1979, plaintiff was advised in a letter from Charles Dole that her salary continuance benefits were being discontinued and her employment was being terminated.

5. Shortly thereafter, plaintiff wrote to Massachusetts Mutual and advised that she intended to appeal the decisions and that she would submit additional medical evidence. By letter dated November 27, 1979, plaintiff submitted further evidence concerning her disability

status, including a report from Dr. Ziferstein, a psychiatrist, who certified that plaintiff was suffering from a psychiatric disability which manifested itself with pain.

6. Plaintiff's request for review was treated as an ERISA appeal by Robert Allison Johnson, the Plan Administrator. At his request, plaintiff was examined by Dr. Saul Faerstein, a psychiatrist, on January 15, 1980. Dr. Faerstein sent Massachusetts Mutual a report dated February 15, 1980, which concluded that plaintiff was temporarily disabled because of a psychiatric illness.

7. Upon receipt of the report, Mr. Johnson decided to grant plaintiff's ERISA appeal, reinstate her salary continuance benefits and reinstate her employment. By letter dated March 11, 1980, Mr. Johnson advised plaintiff of his decision. On March 13, 1980, Massachusetts Mutual's field representative, Denis Hunady, personally deferred payment of all accrued benefits to plaintiff's then attorney, G. Dana Hobart.

8. Massachusetts Mutual has now paid all salary continuance benefits and long-term disability benefits to plaintiff.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes as follows:

1. The Court has jurisdiction of the parties and of the subject matter of plaintiff's claim by virtue of the Employee Retirement Income Security Act of 1974 ("ERISA").

2. Massachusetts Mutual's Salary Continuance Plan is an employee benefit plan as defined in ERISA and is subject to ERISA.

3. ERISA governs plaintiff's claims for disability benefits and preempts all state laws relating to her claims under Massachusetts Mutual's Salary Continuance Plan,

including any state law claims for breach of statutory duties under California *Insurance Code*, Section 790.03, intentional infliction of emotional distress, negligent infliction of emotional distress and breach of fiduciary duties.

4. Federal law developed under ERISA bars any claims for extra-contractual damages and punitive damages arising out of the original denial of plaintiff's claims for benefits under the Salary Continuance Plan and the subsequent review thereof.

5. Massachusetts Mutual's Plan Administrator complied with the provisions for review of ERISA claims in 29 C.F.R. § 2560.503-1(h) and timely rendered his decision regarding his review of plaintiff's claim.

6. Massachusetts Mutual did not breach the employment contract nor any covenant of good faith and fair dealing in connection with the termination of plaintiffs' employment.

7. Plaintiff did not suffer any financial loss as a proximate result of the termination of her employment.

8. Plaintiff's claims for intentional or negligent distress arising out of the termination of employment are barred by the exclusive remedy provisions of California *Labor Code*, Sections 3600-3601.

9. The relief prayed for in plaintiff's Complaint relating to each of the seven causes of action should be denied, and plaintiff should take nothing by reason of the claims in her Complaint.

10. Plaintiff's Complaint is hereby dismissed with prejudice.

11. Defendants are entitled to their costs in the amount of $————.

If any of the foregoing Findings of Fact are construed to be Conclusions of Law, the same shall be deemed

to be Conclusions of Law. If any of the foregoing Conclusions of Law are construed to be Findings of Fact, the same shall be deemed to be Findings of Fact.

LET SUMMARY JUDGMENT BE ENTERED ACCORDINGLY.

Dated: Aug. 24, 1981

/s/ Manuel L. Real
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-81-116-R

DORIS RUSSELL AND RONALD RUSSELL,
Plaintiffs,
vs.
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, CECILIA STEVENSON and DOES 1 through 50, inclusive,
Defendants.

Date: August 3, 1981

Time: 10:00 a.m.

SUMMARY JUDGMENT

[Filed Aug. 24, 1981]

The Motion for Summary Judgment of defendants Massachusetts Mutual Life Insurance Company ("Massachusestts Mutual") and Cecilia Stevenson ("Stevenson") came on regularly for hearing on August 17, 1981 before the Honorable Manuel Real, Judge presiding. Plaintiff Doris Russell appeared by her attorneys of record, Baker & Burton, by Brad N. Baker, Esq. Defendants appeared by their attorneys of record, Adams, Duque & Hazeltine, Richard T. Davis, Jr., Esq. and David L. Bacon, Esq. The Court, having heard oral argument and having duly considered the memoranda submitted by the parties, the affidavits submitted by Massachusetts Mutual and Stevenson, and all of the records and files herein, and having made its Findings of Fact and Conclusions of Law, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That this Court has jurisdiction over the parties and of the subject matter of plaintiff's Complaint.

2. Defendants' Motion for Summary Judgment in their favor on each of the seven claims in plaintiff's Complaint be and it hereby is granted.

3. That plaintiff take nothing by reason of said claims in her Complaint; that the Complaint and the action be dismissed with prejudice; and that the relief prayed for therein be and it hereby is denied.

DATED: Aug. 24, 1981

/s/ Manuel L. Real
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-5879

DC# CV 81-0116 R (Central California)

DORIS RUSSELL,
Plaintiff-Appellant,
vs.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, *et al.*,
Defendants-Appellees.

[Filed Jan. 13, 1984]

ORDER

Before: REINHARDT, Circuit Judge.

Appellees' motion for an extension of time to file a petition for rehearing is granted. The petition shall be filed within 21 days of the date of this order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-5879

D.C. No. 81-0116

(Central District, California)

DORIS RUSSELL,
Plaintiff-Appellant,

vs.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
CELIA STEVENSON,
Defendants-Appellees.

Before: FLETCHER, PREGERSON, and REINHARDT, Circuit Judges.

ORDER

[Filed Apr. 6, 1984]

The panel as constituted in the above has voted unanimously to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc hearing, and no judge of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

STATUTORY PROVISIONS

Employee Retirement Income Security Act of 1974, as amended.

1. Section 409, 29 U.S.C. § 1109 (1982). Liability for Breach of Fiduciary Duty.

> (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.
>
> (b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

2. Section 501, 29 U.S.C. § 1131 (1982). Criminal Penalties.

> Any person who willfully violates any portion of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000.

3. Section 502, 29 U.S.C. § 1132 (1982). Civil Enforcement.

> (a) A civil action may be brought—
>
> (1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of [section] 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b)(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) with respect to a violation of or the enforcement of, parts

2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 515.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute

service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e) (1) Except for actions under subsection (a) (1) (B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a) (1) (B) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) (1) In any action under this title by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan—

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.

(h) A copy of the complaint in any action under this title by participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a) (1)

(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975 (f) (4) of the Internal Revenue Code of 1954); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f) (5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e) (1) of such Code.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the

Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

4. Section 503, 29 U.S.C. § 1133 (1982). Claims Procedure.

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

Regulations promulgated under Section 503 of ERISA, 29 U.S.C. 1133 (1982).

Section 2560.503-1, 29 C.F.R. § 2560.503-1 (1983). Claims Procedure.

(a) *Scope and purpose.*—(1) This section sets out certain minimum requirements for employee benefit plan procedures pertaining to claims by participants and beneficiaries (claimants) for plan benefits, consideration of such claims, and review of claim denials, hereinafter referred to in the aggregate as "claims procedures." Except as otherwise noted, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Employee Retirement Income Security Act of 1974 (the Act).

(b) *Obligation to establish a reasonable claims procedure.* Every employee benefit plan shall establish and maintain reasonable claims procedures.

(1) A claims procedure will be deemed to be reasonable only if it:

(i) Complies with the provisions of paragraphs (d) through (h) of this section, except to the extent that it is deemed to comply with some or all of such provisions under the authority of paragraph (b)(2) or paragraph (j) of this section. [Amended by 46 FR 5882, originally scheduled to be effective February 20, 1981. However, the effective date was delayed under the President's regulation freeze at least until March 30, 1981 (46 FR 11253).]

(ii) Is described in the summary plan description, as required by § 2520.102-3,

(iii) Does not contain any provision, and is not administered in a way, which unduly inhibits or hampers the initiation or processing of plan claims, and

(iv) Provides for informing participants in writing, in a timely fashion, of the time limits set forth in paragraphs (e)(3) and (g)(3) and subsection (h).

(2) In the case of a plan established and maintained pursuant to a collective bargaining agreement (other than a plan subject to the provisions of section 302(c)(5) of the Labor Management Relations Act, 1947 concerning joint representation on the board of trustees):

(i) Such plan will be deemed to comply with the provisions of paragraphs (d) through (h) of this section if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference

(A) Provisions concerning the filing of benefit claims and the initial disposition of benefit claims, and

(B) A grievance and arbitration procedure to which denied claims are subject.

(ii) Such plan will be deemed to comply with the provisions of paragraphs (g) and (h) of this section (but will not be deemed to comply with paragraphs (d) through (f)) if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference a grievance and arbitration procedure to which denied claims are subject (but not provisions concerning the final and initial disposition of benefit claims).

(c) *Claims procedure for an insured welfare or pension plan.*—(1) To the extent that benefits under an employee benefit plan are provided or administered by an insurance company, insurance service, or other similar organization which is subject to regulation under the insurance laws of one or more States, the claims procedure pertaining to such benefits may provide for filing of a claim for benefits with and notice of decision by such company, service or organization.

(2) See paragraph (g) regarding review and final decision on denied claims by insurance companies, insurance services and similar organizations.

(d) *Filing of a claim for benefits.* For purposes of this section, a claim is a request for a plan benefit by a participant or beneficiary. A claim is filed when the requirements of a reasonable claim filing procedure of a plan have been met. If a reasonable procedure for filing claims has not been established by the plan, a claim shall be deemed filed when a written or oral communication is made by the claim-

ant or the claimant's authorized representative which is reasonably calculated to bring the claim to the attention of:

(1) In the case of a single employer plan, either the organizational unit which has customarily handled employee benefits matters of the employer, or any officer of the employer.

(2) In the case of a plan to which more than one unaffiliated employer contributes, or which is established or maintained by an employee organization, either the joint board, association, committee or other similar group (or any member of any such group) administering the plan, or the person or organizational unit to which claims for benefits under the plan customarily have been referred.

(3) In the case of a plan the benefits of which are provided or administered by an insurance company, insurance service, or other similar organization, which is subject to regulation under the insurance laws of one or more states, the person or organizational unit which handles claims for benefits under the plan or any officer of the insurance company, insurance service, or similar organization.

(4) For purposes of paragraphs (d) (1), (2), and (3) of this section, a communication shall be deemed to have been brought to the attention of an organizational unit if it is received by any person employed in such unit.

(e) *Notification to claimant of decision.*—(1) If a claim is wholly or partially denied, notice of the decision, meeting the requirements of paragraph (f) of this section, shall be furnished to the claimant within a reasonable period of time after receipt of the claim by the plan.

(2) If notice of the denial of a claim is not furnished in accordance with paragraph (e) (1) of this

section within a reasonable period of time, the claim shall be deemed denied and the claimant shall be permitted to proceed to the review stage described in paragraph (g) of this section.

(3) For purposes of paragraphs (e) (1) and (2), of this section, a period of time will be deemed to be unreasonable if it exceeds 90 days after receipt of the claim by the plan, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the final decision.

(f) *Content of notice.* A plan administrator or, if paragraph (c) of this section is applicable, the insurance company, insurance service, or other similar organization, shall provide to every claimant who is denied a claim for benefits written notice setting forth in a manner calculated to be understood by the claimant;

(1) The specific reason or reasons for the denial;

(2) Specific reference to pertinent plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

(g) *Review procedure.* (1) Every plan shall establish and maintain a procedure by which a claimant or his duly authorized representative has a reasonable opportunity to appeal a denied claim to an appropriate named fiduciary or to a person designated by such fiduciary, and under which a full and fair review of the claim and its denial may be obtained. Every such procedure shall include but not be limited to provisions that a claimant or his duly authorized representative may:

(i) Request a review upon written application to the plan;

(ii) Review pertinent documents; and

(iii) Submit issues and comments in writing.

(2) To the extent that benefits under an employee benefit plan are provided or administered by an insurance company, insurance service, or other similar organization which is subject to regulation under the insurance laws of one or more States, the claims procedure pertaining to such benefits may provide for review of and decision upon denied claims by such company, service or organization. In each case, that company, service, or organization shall be the "appropriate named fiduciary" for purposes of this section. In all other cases, the "appropriate named fiduciary" for purposes of this section may be the plan administrator or any other person designated by the plan, provided that such plan administrator or other person is either named in the plan instrument or is identified pursuant to a procedure set forth in the plan as the person who reviews and makes decisions on claim denials.

(3) A plan may establish a limited period within which a claimant must file any request for review of a denied claim. Such time limits must be reasonable and related to the nature of the benefit which

is the subject of the claim and to other attendant circumstances. In no event may such a period expire less than 60 days after receipt by the claimant of written notification of denial of a claim.

(h) *Decision on review.*—(1) (i) A decision by an appropriate named fiduciary shall be made promptly, and shall not ordinarily be made later than 60 days after the plan's receipt of a request for review, unless special circumstances (such as the need to hold a hearing, if the plan procedure provides for a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of a request for review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary, which holds regularly scheduled meetings at least quarterly, a decision on review shall be made by no later than the date of the meeting of the committee or board which immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a decision may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan procedure provides for a hearing) require a further extension of time for processing, a decision shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review.

(2) If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

(3) The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based.

(4) The decision on review shall be furnished to the claimant within the appropriate time described in paragraph (h)(1) of this section. If the decision on review is not furnished within such time, the claim shall be deemed denied on review.

(i) *Apprenticeship plans.* This section does not apply to employee benefit plans which provide solely apprenticeship training benefits.

Effective date: This section becomes effective for claims filed on or after October 1, 1977.

(j) *Qualified Health Maintenance Organizations.* Claims procedures with respect to any benefits provided through membership in a qualified health maintenance organization, as defined in section 1310 (d) of the Public Health Service Act, as amended, 42 U.S.C. § 300e-9(d), shall be deemed to satisfy the requirements of this section with respect to the provision of such benefits to persons who are members of such qualified health maintenance organization, provided those procedures meet the requirements of section 1301 of the Public Health Service Act, as amended 42 U.S.C. § 300e and the regulations thereunder. [Added by 46 FR 5882, originally scheduled to be effective February 20, 1981. However, the effective date was delayed under the President's regulation freeze until March 30, 1981 (46 FR 11253).]

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY

Springfield, Massachusetts 01111/(413) 788-8411

October 17, 1979

Mrs. Doris Russell
1967 N. Avenue 52
Los Angeles, California 90042

Dear Mrs. Russell:

This is to inform you that effective October 17, 1979, your Salary Continuance benefits are terminated. Our decision to terminate benefits is based on Dr. Michael D Rosco's opinion that you are not disabled in any way which prevents you from performing your usual duties for the Massachusetts Mutual. Our action is in accordance with Article III. Benefits and Claim Procedures as shown in the Employee Salary Continuance booklet.

As you had indicated to your Manager in June, 1979, that you did not wish to relocate when the office was moved, your employment with the Massachusetts Mutual is terminated also effective October 17, 1979.

If you wish to appeal the discontinuance of Salary Continuance benefits, you may do so by contacting the Plan Administrator within sixty days. You may review any documents related to the discontinuance of benefits and submit in writing further information and comments.

The Plan Administrator will make a final decision on a review of your claim within sixty days. He will give specific reasons and references to the plan provision on which his decision is based. The sixty days may be extended for another sixty days if the Plan Administrator feels that special circumstances exist which require an extension of time. The Plan Administrator's address is:

Plan Administrator, Salary Continuance Plan
c/o Payroll Section
Employee Services Department
Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, MA 01111

Sincerely,

/s/ Charles S. Dole
CHARLES S. DOLE
Director of Group Claims

CSD:sla

L.A., Ca. 90042

22 October 79

Mass. Mutual Life Insurance Co.
Springfield, Mass.
Charles S. Dole

Dear Mr. Dole:

Thank you for your letter of October 17. The information contained therein opens the door to a thorough housecleaning of Paypoint G-213, and an exposé of its management practices.

Point 1. Your decision to terminate my Salary Continuance benefits was influenced by an orthopedist. My own orthopedist clearly states that my problem is not orthopedic in nature—but, he agrees that the problem exists and prevents my performing any of the duties of my regular occupation. Further information on this will be forthcoming.

Point 2. Your decision to terminate my employment is based on inaccurate information. In no way, either verbally or in writing, did I inform Mrs. Stevenson of any intention not to make the move to the new location. Another of Mrs. Stevenson's many errors in judgment, and/or misinterpretation of another's statement to suit her purposes . . . and this one will not be overlooked in the final exposure.

I definitely wish to appeal the discontinuance of Salary Continuance, and I also wish to apply for Long Term Disability. I phoned the Plan Administrator and spoke to Peter Feige(?), who asked that I send a written re-

quest for documents mentioned in Par. 3 of your letter. Perhaps you will be kind enough to convey this request to him.

In addition, I am requesting: 1. A copy of LTD plan, and application for benefits. 2. The name and address of Mass. Mutual's Workmen's Compensation carrier.

Your prompt cooperation in getting these items will be appreciated.

Sincerely,

/s/ Doris Russell
DORIS RUSSELL
DR/sf

P.S. I still have 8 days vacation time due for this year. I trust that compensation for this will be included with my final check (Per State of Calif. Labor Code Sect. 201), as you have contended that I am not ill, and have terminated me for nebulous reasons without notice or compensatory salary. (2 weeks notice or severance pay.)

October 25, 1979

Mrs. Doris Russell
1967 N. Avenue 52
Los Angeles, CA 90042

Dear Mrs. Russell:

This letter acknowledges your October 22, 1979 request to Mr. Dole for an appeal of the decision to discontinue Salary Continuance benefits. Until I receive the further information to which you refer in "Point 1" of your letter, I do not feel that I can complete a fair examination of the facts. You can be assured that I will give your appeal prompt attention upon receipt of that information.

I have been informed that Mr. Feige has provided the documents which you requested, i.e. Dr. Rosco's report and a copy of the Salary Continuance booklet, and that Mr. Demchuck has provided you with information concerning our Workers' Compensation carrier. I have also been informed that Mrs. Emery is processing your final pay, which will include payment for unused vacation per our standard procedures. If you desire further information in any of these areas, feel free to write directly to me.

I have enclosed a copy of our employee Long Term Disability Plan booklet. A complete copy of the Plan document can be purchased for $1.00 by sending a check payable to Massachusetts Mutual to Mr. Feige. I have not enclosed an application for LTD benefits because your eligibility for benefits ceased upon termination of employment.

Sincerely,

/s/ R. Allison Johnson
Plan Administrator
Salary Continuance Plan

RAJ:rfl
C:Dole

Doris Russell
1967 N. Avenue 52
Los Angeles, CA 90042

November 27, 1979

R. Allison Johnson, C.L.U.
Plan Administrator
Salary Continuance Plan
Mass. Mutual Life Ins. Co.

Re: Appeal for reinstatement of Salary Continuance Benefits

Dear Mr. Johnson:

Enclosed are copies of the following:

1. Dr. Ziferstein's report (also being used in connection with my Workmen's Compensation claim), which outlines the true nature of my disabling illness.
2. Medical claim form submitted by Dr. Ziferstein direct to Mass. Mutual Employee Services.
3. Dr. Rosco's reply to my rebuttal of his report.
4. Questionnaire which I completed in Dr. Rosco's office prior to examination of 9/18/79. (I have made notations on this to clarify certain answers. Circled items are Dr. Rosco's notations, not mine.)
5. X-ray reports from two chiropractic roentgenologists. Note that the x-rays were taken two years apart, in 1977 and 1979. Both indicate muscular spasms. My symptoms prior to and during those two years indicate that the spasms were continuous, and not two separate incidents.

The enclosed items, together with a thorough and careful review of my personal medical claim file (at Spring-

field), should enable any unbiased committee to accurately evaluate my claim and arrive at a fair decision.

Very truly yours,

/s/ Doris Russell
DORIS RUSSELL

DR/sf

COPY: State of California
Department of Insurance

P. S. Would you kindly instruct Employee Services to send any medical claim payments and/or correspondence direct to me? My final paycheck was forwarded to me from the Hacienda Heights office in an *unsealed* envelope. I'm surprised the check wasn't lost in transit. Furthermore, as I am no longer an employee of PP G 213, I do not wish to have confidential information passed through that office.

March 11, 1980

Mrs. Doris Russell
1967 N. Ave. 52
Los Angeles, CA 90042

Dear Mrs. Russell:

I have completed my review of your appeal of our denial of Salary Continuance benefits. Based on the additional information which you provided, it is my opinion that you are entitled to receive benefits for a temporary period. I have instructed Mr. Denis Hunady to discuss with you the details of my decision.

Sincerely,

/s/ R. Allison Johnson

RAJ:rfl

April 1, 1980

Mrs. Doris Russell
1967 N. Avenue 52
Los Angeles, CA 90042

Dear Mrs. Russell:

The attached worksheet provides an explanation of the payment of $4,106.55 made to you. As you will see in that worksheet, appropriate taxes and Group Insurance contributions have been withheld. Disability benefits, when approved, will be retroactive to coincide with the exhaustion of Salary Continuance benefits. As I mentioned the other day, we will process your claim as soon as we receive the claim forms.

You had asked for information concerning reports from Dr. Allred. The only report we received prior to the October 17, 1979, termination of benefits was dated July 1979. Subsequent to the termination of benefits, we received a report from Dr. Allred dated October 16, 1979.

Sincerely yours,

Peter A. Feige
Associate Director of Employee Benefits

Salary Continuance:	10	days @ full pay	$ 618.70
	68½	days @ 2/3 pay	2,824.94
	15	days @ 1/3 pay	309.30
Holiday pay:	6	days @ full pay	371.22
Additional accrued vacation:	10	days @ full pay	618.70
Gross Pay			$4,742.86
Less: FICA (on vacation and holiday only)			– 60.68
Federal Tax			–420.58
State Tax			– 48.60
State Disability (on vacation and holiday only)			– 9.90
Group Insurance			– 96.55
Net Pay			$4,106.55